

# Blog Entry: Ohio Appeals Court Dents Plaintiffs' Class Certification Motion

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Four independent auto body shops sued Progressive Casualty Insurance Company in state court in Cleveland. Their gripe? They claimed that they repaired Progressive-covered vehicles but that Progressive tortiously interfered with their relationships with their customers “by dictating what services and parts Progressive was “willing to pay for” when the body shops were “tasked with repairing” a covered vehicle. They also complained that Progressive improperly “dictate[d] the labor rates” it was willing to pay the body shops “without regard to a particular shop’s rates.” “[T]hese limitations,” plaintiffs contended, did “not necessarily allow for them to restore an insured’s car to its original, pre-loss condition,” which they alleged violated both Ohio law and Progressive’s own insurance policies.

The body shops sought damages “for parts and labor expended in excess of” Progressive’s restrictions and declaratory relief requiring Progressive “to indemnify” the body shops “from any liability arising from their compliance with these restrictions.”

Progressive, in turn, asserted that its “practices are part of the competitive market for auto repair services in Ohio” and that its “Direct Repair Program” is “able to repair an insured’s vehicle to its pre-loss condition under the same terms offered to plaintiffs.”

A seemingly simple fact pattern. The body shops claimed that Progressive wasn’t paying them enough to repair covered vehicles and Progressive claimed that it was.

But this is a class action blog, so we’d be remiss if we ignored the fact that the body shops also moved for class certification. Their requested class?

All Ohio registered auto body repair shops, or registered individuals, with the exception of those members of Progressive’s Direct Repair Program that have performed physical auto body repairs paid for directly or indirectly, partially or in full, by Progressive as a result of Automobile insurance policies issued by Progressive, from August 7, 2005 through present.

The trial court denied their motion, and on December 1, 2016, Ohio’s Eighth District Court of Appeals affirmed. As for class certification on plaintiffs’ dec claim, the court was unmoved by their argument that their dec claim sought relief that fundamentally differed from that sought in their damages claim. Specifically, the body shops had argued that their dec claim sought “indemnification for potential liability arising from their adherence to” Progressive’s restrictions, while their damages claim sought “unrelated damages for situations in which” the body shops performed “necessary repairs notwithstanding Progressive’s refusal to pay.” That didn’t persuade the court, which found that the dec claim was “merely incidental to” plaintiffs’ damages claim. “[C]laims for declaratory

relief that merely lay a foundation for subsequent determinations regarding liability or that facilitate an award of damages,” the court stated, “do not meet the requirement for certification” set forth in” Ohio Rule of Civil Procedure 23(B)(2).

And then there was the predominance factor, which militated against certification of *both* claims. The court found that “voluminous individual questions” predominated over those common to the class, including: “Was the allegedly defective repair in a particular incident due to Progressive’s mandates or the body shop’s own negligent labor performance within those mandates? Was the shop’s desired service or part appropriate and necessary for each particular repair that is later deemed faulty? How can the trial court deem that Progressive is always liable when it and the shop diverge on the manner or type of repair to be performed without the individualized context of every possible car repair that may occur?” The court also noted that if the class were to be certified, the trial court “would have to examine each repair and consider whether the additional services or parts that Progressive allegedly denied to the particular class member were necessary to restore the damaged vehicle in question to its pre-loss condition.” Indeed, a “looming mass of individualized inquires ... would dominate this litigation.” And that put the brakes on plaintiffs’ class certification motion.

The case is *Blue Ash Auto, Inc. v. Progressive Cas. Ins. Co.*, 8th Dist. Cuyahoga Nos. 104251 and 104252, 2016-Ohio-7965. Click here for the opinion:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-7965.pdf>.